

Special Civil Application No 6921 of 1987

Date of decision: 12th February 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

RAJENDRAKUMAR D THAKER

vs

STATE OF GUJARAT

Appearance:

Shri S. TRIPATHI, Advocate, for the Petitioner.

Shri D.N.PATEL, Assistant Government Pleader, for the Respondents.

Coram : MR.JUSTICE A.N.DIVECHA

12th February 1996

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.3 herein) on 23rd March 1984 under section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the common appellate order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein)

on 12th October 1987 inter alia in Appeal No,Rajkot-814 of 1984 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, the holding of the petitioner was declared surplus by 26.09 square metres.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under section 6 of the Act with respect to his holding within the urban agglomeration of Rajkot. It came to be processed by respondent No.3 herein. After observing all necessary formalities according to law, by his order passed on 23rd March 1984 under section 8 (4) of the Act, respondent No.3 declared the holding of the petitioner to be in excess of the ceiling limit by 26.09 square metres. Its copy is at Annexure-A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under section 33 of the Act. It came to be registered as Appeal No.Rajkot-814 of 1984. It was heard along with Appeals Nos.Rajkot-812 of 1984 and Rajkot-73 of 1984. By the common appellate order passed on 12th October 1987 in the aforesaid three appeals, respondent No.2 inter alia dismissed the petitioner's appeal. A copy of the appellate order is at Annexure-B to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition.

3. As rightly submitted by learned Advocate Shri Tripathi for the petitioner, the house property situated in Bhaktinagar Society admeasuring 376.39 square metres ought to have been excluded from the petitioner's holding in view of the binding ruling of the Supreme Court in the case of MEERA GUPTA v. STATE OF WEST BENGAL reported in AIR 1992 Supreme Court at page 1567. If that is done, runs the submission of learned Advocate Shri Tripathi for the petitioner, the holding of the petitioner will not be in excess of the ceiling limit. As against this, learned Assistant Government Pleader Shri Patel for the respondents has submitted that the matter should be remanded to respondent No.3 for making an inquiry as to whether or not the house property was in existence prior to coming into force of the Act and whether or not its construction was authorised.

4. It cannot be disputed that the petitioner filed his declaration under section 6 (1) of the Act with respect to his holding as on 17th February 1976. Since the house property situated in Bhaktinagar Society figures in the final order, there is no escape from the conclusion that it must have have figured in the declaration in the prescribed form under section 6 (1) of the Act. If it was in existence on the date of coming into force of the Act, it can be said that it was in existence prior

thereto.

5. The construction of the house property will have to be presumed to be authorised for the simple reason that the area declared surplus is to the tune of only 26.09 square metres but the area represented by the constructed property is 376.39 square metres. It would not be desirable to subject the petitioner to any further inquiry proceeding before respondent No.3 for exclusion of such a small area from his holding. In that view of the matter, I think it fit to raise a presumption about authorised construction of the house property. It is required to be excluded in view of the aforesaid binding ruling of the Supreme Court. Once this is done, the holding of the petitioner will be far below 1500 square metres prescribed as the ceiling limit for the urban agglomeration of Rajkot.

6. In the result, this petition is accepted. The order passed by the Competent authority at Rajkot on 23rd March 1984 under section 8 (4) of the Act at Annexure-A to this petition as affirmed in appeal by the common appellate order passed by the Urban Land Tribunal on 12th October 1987 inter alia in Appeal No.Rajkot-814 of 1984 at Annexure-B to this petition is quashed and set aside. It is hereby declared that the holding of the petitioner is not in excess of the ceiling limit for the purposes of this Act. Rule is accordingly made absolute with no order as to costs.

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